IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11464 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE RAVI R. TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAY T SHAH

Versus

STATE OF GUJARAT

Appearance:

MR AJ YAGNIK for Petitioners

GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE RAVI R. TRIPATHI

Date of decision: 27/12/2000

C.A.V. JUDGEMENT (Per : MR.JUSTICE RAVI R. TRIPATHI)

Mr.A.J. Yagnik, learned advocate for the petitoners seeks permission to delete respondent no.2. Permission is granted. Respondent no.2 stands deleted.

2. Rule. Mr.D.N. Patel, learned Assistant Govt. Pleader waives service of rule on behalf of respondents nos.1 and 3.

3. The matter pertains to transfer of Engineering students studying in various engineering colleges in the State, who are transferred to L.D. Engineering College, Ahmedabad. The grievance of the petitioners is that the transfers are not only contrary to the provisions made in this regard but are also much more excess than the permissible limits under the relevant provisions. It was submitted that maximum limit of permissible transfers is 5% of the intake capacity of the college while in the present case, as the details are set out, the respondent authorities have transferred more than 200 students and to be precise 231 students to L.D. Engineering College at Ahmedabad in different semesters. It is submitted that if the maximum permissible limits would have been adhered to, then the number of students transferred could not have been more than 25. But the respondent authorities, for the reasons best known to them have chosen to permit as many as 228 students. It is stated in the affidavit in reply that out of 228 students, 188 students have reported in L.D. Engineering College at Ahmedabad.

4. The petitioners, who are students of L.D. Engineering College, have filed this petition raising their grievance before the Court about the illegalities and irregularities committed by the respondent Govt. in transferring en masse more than 200 students to L.D. Engineering College, Ahmedabad from different Engineering Colleges of the State, on the so called health grounds and special circumstances. It is averred that such transfers are in violation of the rules, regulations, resolutions and provisions relating to transfer of students from one Engineering College to another. It is also averred that the transfers are in excess of 5 % of the intake capacity which is a norm established by the Govt. of Gujarat. It is then set out that the intake capacity of L.D. Engineering College is 480. Therefore, around 25 students could have been transferred within the limits prescribed for the same. It is also averred that the transfer in question are based on extraneous and extra legal considerations and therefore the same are vitiated on account of mala fides in facts and in law. It is also averred that the transfers are in violation of

policy of the All India Council for Technical Education, the national statutory authority having exclusive power to decide the intake capacity of respective colleges/ institutions.

5. The petitioners have also alleged that the present transfers are nothing but a mode of giving back door entry to those less meritorious students who could not at the first instance get admission in the respective branches of engineering at L.D. Engineering College, Ahmedabad. The petitioners also alleged that by such transfers academic level of L.D. Engineering College, Ahmedabad is adversely affected and that the college in question is burdened with almost 40% more students than the intake capacity which is to be borne by the existing infrastructural facilities and which is likely to have an adverse impact on the overall standard of education.

6. In this matter notice was issued on 13.11.2000 making it returnable on 20.11.2000. Learned Assistant Govt. Pleader, Shri D.N. Patel appearing for respondents nos.1 to 3 sought time to file affidavit in reply, which came to be filed only on 27.11.2000.

7. The affidavit is filed by one Shri S.C. Sanehi, Secretary of Higher and Technical Education, State of Gujarat has admitted in para 4 of the affidavit in reply that as many as 228 transfers were ordered, of which only 188 students have reported. It is further stated that the students have been transferred from various Engineering Colleges of the State of Gujarat to L.D. Engineering College, Ahmedabad form different branches, like Civil Mechanical, Electrical, Electronics & Communication, Instrumentation Control and Chemical Engineering. The deponent has admitted that so far as transfer of students from one Engineering College to another within the State of Gujarat is to be regulated by a committee consisting of,

(i) Secretary, Higher and Technical Education,

(ii) Deputy Secretary, Technical Education, and

(iii) Director, Technical Education.

It is also deposed that an application of a student is placed for scrutiny by the aforesaid Committee on the basis of the aforesaid Govt. Resolution dated 10.3.1986. (A copy of the Resolution produced at Annexure 'C' to the

petition at page 43 bears date 10.9.1986). The deponent has further deposed that in the academic year 2000-2001, Education Department had received around 300 applications out of which 228 students have been ordered to be transferred to L.D. Engineering College, Ahmedabad by the State Government in different disciplines in 3rd, 5th and 7th semesters as narrated at Annexure 'I' to the affidavit in reply. It is also stated that the students are transferred because of two reasons, namely, (i) for his/ her personal sickness, and (ii) family circumstance/ family reasons. The deponent then proceeds to state that,

> ".. .. only 9 students have certificate of sickness from Medical Board whereas other students who have been transferred on the medical ground because of either their personal sickness and/ or sickness of family member or sickness of their relatives. But the fact remains that they do not have certificate from the Medical Board."

8. The deponent has also stated in the affidavit in reply that rest of the students have been transferred on the ground of family circumstances. The deponent has admitted in terms that by and large the transfers are in excess of the permissible 5% limit and in some cases the excess is to the extent of 26.4%, 37%, 28.8%, 21% and so on. The deponent has then stated that,

> "I submit that henceforth in future all care will be taken to transfer the students within the permissible limit fixed by the State Government and to this effect I have had personal meetings with higher ups of the Education Department."

The deponent then proceeds to submit that,

> "In view of the above facts and circumstances of the case, the transfer orders passed in favour of all the students may not be disturbed and Your Lordships may not invoke the extra ordinary jurisdiction under Article 226 of the Constitution of India."

9. The Court has perused the affidavit in reply in detail, but could not find any details of the ground of "family circumstance whereas in the Resolution the family circumstance which is to be taken into consideration is set out in so many words, i.e. to reiterate that if guardian/ father of a student expires during the course

of study or in view of any special circumstance, the request of the student for transfer can be taken into consideration.

10. Thus, transfers are clearly in violation of the contents of the Resolutions referred to hereinabove and therefore, the same is required to be quashed and set aside by this Court.

11. It is important to note that the admissions in Engineering Colleges are governed by various regulations on the subject and also the principles laid down in various judgements by the Apex Court. It is a matter, of which judicial notice can be taken that the admissions in Engineering Colleges are on merits. The students who are higher in merit prefer to be admitted in L.D. Engineering College, Ahmedabad. The students who could not get admission on merits at L.D. Engineering College, take admission in other engineering colleges of the State. Therefore, the students who are now seeking transfer to L.D. Engineering College are those who had not been successful to get admission in L.D. Engineering College, Ahmedabad, on merits.

12. The aspect of transfer from one college to another is regulated by a Govt. Resolution bearing no.TEN/ 1096/ 2230/ SH dated 10.9.1986 issued by Education Department. Govt. of Gujarat. Earlier, transfers from one Engineering College/ Polytechnic to another Engineering College/ Polytechnic were governed by Resolutions referred to in the said Resolution. However, by the aforesaid Resolution, earlier Resolutions dated 4.6.1985 and 7.8.1985 are cancelled while Resolutions dated 20.7.1972 and 12.5.1978 are continued, which deal with transfer on the basis of merit. In the present petition, students who are transferred on merits is not challenged. What is challenged is those transfers which are in excess of the permissible limits of 5% of the intake capacity of the college and the transfers made on the grounds not permissible. The Resolution dated 10.9.1996 prescribes that requests for transfer should be entertained only on two grounds, namely, (i) on account of medical grounds, and (ii) on account of any other family circumstance. A copy of the Resolution is produced at Annexure 'C2", page 43. It is specifically provided in the said Resolution that the principles governing transfer from one Engineering college to another on the basis of merit, are governed by Resolutions dated 20.7.1972 and 12.5.1978 and the same continue to govern the field. However, if any vacancy remains, which should have been on the basis of merits

than that vacancy plus 5% seats of the intake capacity could be filled in by following the procedure laid down in the Resolution. It is prescribed in the said Resolution that in a case of a student who needs a special type of treatment or a provision, in such case on the basis of a certificate issued by Medical Board, request for transfer of place can be entertained. It is important to note that in the same clause it is specifically mentioned that on the ground of sickness of a family member of the student request of transfer of such a student will not be taken into consideration.

13. Another circumstance on which the request for transfer can be entertained is -- other family circumstances. That clause sets out in clear terms as to what is to be considered as a special family circumstances which would warrant a request for transfer to be entertained. Special type of family circumstances like during the course of study if the guardian/ father of the student expires. Meaning thereby, only in such special circumstance, that the request of a student for transfer of place can be taken into consideration.

14. The Resolution then proceeds to lay down the details of the procedure to be followed in the case of transfer. Clause (2) of the Resolution provides that in the cases where a student is seeking transfer either on medical ground or on the ground of family circumstance he will have to make an application to the Secretary, Education Department, Sachivalaya, Gandhinagar by sending a copy of the same through local Principal to the Government, and sending second copy directly to the Education Department. It is also provided that the students who are seeking transfer will have to make such applications before the last date of 2nd, 4th, and 6th semesters of the institute to which transfer is sought for. It is further provided that if the result of earlier semester is already declared then photo copy of the result and if the transfer is sought for on medical ground a certificate of the Medical Board will be required to be attached/ accompanied. It is also provided that such transfers will normally be granted at the commencement of 3rd, 5th and 7th semesters. It is also important to note that the Resolution provided that after 15 days from the commencement of the semester transfers will not be granted.

15. In view of the aforesaid facts the Court has no doubt in mind that the transfers are ordered for extraneous considerations and therefore, the same cannot be allowed to stand except the transfers which are in

accordance with the Resolution dated 10.3.1986. The transfers which are supported by necessary certificate by the Medical Board are mentioned at serial nos. .41, 75, 76, 145, 165 and 166 in Annexure 'I' to affidavit in reply. Except these transfers, all other transfers are required to be quashed and set aside as the same are in violation of the Resolution.

16. Learned advocate appearing for the petitioner sought reliance on the judgement of the Apex Court in the matter of State of U.P. and others v. Ramona Perhar (Km) reported in (1994) 6 SCC 1, wherein a student seeking transfer from a recognised private medical college (in the State of Karnataka) to a Govt. Medical College at Allahabad, Uttar Pradesh had filed the petition before the High Court being aggrieved of the rejection of his request for transfer by the State of U.P. on the basis of the policy of the State of U.P. Learned Single Judge of the High Court had passed an interim order directing that the student be provisionally admitted to Allahabad College to pursue IInd provisional MBBS Course on 5% vacancies, but results shall not be declared until further orders. Thereafter, another learned Single Judge considering the fact that the State Govt. had allowed the transfer pursuant to interim order and that the student pursued studies and appeared in the examination, issued directions to declare result of the student. The Honourable Apex Court, after considering that both the orders of the High Court were made in disregard of the State policy governing such transfers and also the claims of other deserving students, if any, was pleased to set aside the mandatory interim order and also the subsequent order issued in a routine manner. The Apex court observed that the student having invited such orders should take consequences flowing from that invalidation. Learned advocate for the petitioners submitted that as in the present case the students who have invited invalid transfer orders from the State authorities must take consequences of the same and that this Court must not affix seal of approval to such illegal acts of the respondents authorities. Learned advocate appearing for the petitioners also sought reliance on a judgement of the Apex Court in the matter of State of U.P. and another v. Praveen Kumar Sharma and others, reported in (1994) 6 SCC 605, wherein the Apex court was pleased to hold that the applicant for transfer must be considered in light of the relevant provisions read with notification and reasoned order be passed.

17. In view of the aforesaid discussion, all the

transfers which are issued by the State Govt. except those which are mentioned hereinabove being on the basis of genuine certificate issued by the Medical Board stand cancelled. The respondents are directed to invite and consider the applications for transfer of students strictly in accordance with the Govt. Resolution dated 10.9.1986 (Annexure 'C', page 43 of the petition).

18. Rule is made absolute to the aforesaid extent only with no order as to costs.

(B.C. Patel, J.)

Dated : 27.12.2000 (Ravi R. Tripathi, J.)

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